(2)

No. 05-1094

Supreme Court, U.S.
FILED
MAY 25 2006

In The
Supreme Court of the United States

WILLIE J. HORTON, JR.,

Petitioner,

v.

JUDGE JAMES AHLER, COMMISSION ON PROFESSIONAL COMPETENCE, SAN DIEGO COUNTY, EDWARD LOPEZ, SUE BRAUN, JOHN DE BECK, RON OTTINGER, FRANCES ZIMMERMAN, ALAN BERSIN, TERRANCE SMITH, KIMIKO FUKUDA, MARY HOPPER, KATHERINE, COFFARO, JAIME BUENSUCESCO, DEBERIE GOMEZ, TONY ALVARADO, SAN DIEGO UNIFIED SCHOOL DISTRICT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR REHEARING

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Pro Se

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INTRODUCTION

Petitioner, Willie J. Horton, Jr., respectfully moves this Court for an Order vacating its denial of the Petition for Writ of Certiorari entered May 1, 2006 and allowing this petition to go forward.

This Court should grant Horton's petition for rehearing in light of granting the petition for certiorari in *Timothy Booth, Petitioner v. C.O. Churner, et al.*, 531 U.S. 956 (2000). This case raised the identical question of exhaustion of administrative remedies as does Horton's.

In *Booth*, before resorting to federal court, Booth filed an administrative grievance but did not seek administrative review after the prison authority denied relief. Booth's failure to appeal administratively led the District Court to dismiss the complaint without prejudice for failure to exhaust administrative remedies under 42 U.S.C. §1997e(a). The Third Circuit affirmed and rejected Booth's argument that the exhaustion requirement is inappropriate to his case because the administrative process could not award him the monetary relief he sought (money being the only relief still requested).

This Court granted certiorari to address the conflict among the circuits.

Horton respectfully asks the Court for the same consideration. The instant case involves the construction and application of the Administrative Procedures Act, California Government Code section 11524. ("APA").

There is a conflict of the appellant decision rendered by the District Court and affirmed by the Appeals Court concerning applicable statutes which superceded section 11524. The District Court was faced with an administrative

procedures act which prohibited the San Diego Unified School District (SDUSD) from refiling the same charges after its motion for a continuance was denied in Office of Administrative Hearing, Case No. L-2000030303 was denied. The Court of Appeals affirmed the ruling.

This was a grievous legal error by the District Court. The Court held SDUSD served a petition on September 29, 2000 with another notice of dismissal based on the same charges pursuant to the applicable statutes. APA regulations state that the regulations specify the procedures by which the Office of Administrative hearings conducts matters before it, stating in part, "When a statute is in conflict with or inconsistent with these regulations, the statute shall take precedence." The applicable statute the District Court is referring to is in conflict with the challenged APA statute, California Government Code section 11524. SDUSD did not go beyond the first step. It did not seek intermediate or final administrative review after the first administrative law judge dismissed the charges against Horton, and denied its motion for a continuance.

SDUSD's failure to avail itself of the later stages of the administrative process should have led the District Court to find for Horton. Time is long past for SDUSD to pursue its normal administrative remedies; therefore, it cannot cure the defect in its complaint on which the first administrative law judge based his dismissal.

In *Booth*, before the ruling of the pre-amended §1997e(a) in *McCarthy v. Madigan*, 503 U.S. 140 (1992), the Court did not require exhaustion of remedies by those seeking only monetary damages when money was unavailable at the administrative level. The amendment eliminated both the discretion to dispense with administrative

exhaustion and the condition that the remedy be "plain, speedy, and effective" before exhaustion could be required.

In *McCarthy* the Court held "of paramount importance" to any exhaustion inquiry is the Congressional intent, citing *Patsy v. Board of Regents of Florida* (1982) 456 U.S. 496; 501; L. Ed.2d 172; 102 S. Ct. 2557. The Court further held exhaustion serves the twin purposes of protecting the administrative agency's authority and promoting judicial efficiency. Where Congress specifically mandates, exhaustion is required.

REASONS FOR GRANTING THE PETITION FOR REHEARING

Horton is the aggrieved party complaining about violations of federal law and the United States Constitution and petitions this Court for a rehearing. Horton's termination as a tenured teacher must comply with the provisions of the California Administrative Procedures Act, Cal. Govt. Code section 11500-11528, *et seq.*

CONCLUSION

Petitioner respectfully submits that this Court granted the petition for writ of certiorari in *Booth*, and it should likewise grant this petition for rehearing.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As pro se Petitioner, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44(2) of the Rules of this Court.

WILLIE J. HORTON, JR.